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ABSTRACT

This document analyzes Department of Health, Education and Welfare (DHEW) regulations for day care centers and homes. New DHEW day care proposals are paraphrased and the content and history of related regulations are summarized. Topics discussed include definitions, applicability, Office of Education waivers, program activities for children, training, nutrition, health and safety, physical environment, social services, parent involvement, group sizes and staff-to-child ratios, monitoring of compliance, State Agency waivers, future review of day care regulations, the State Agency Advisory Council and effective date of compliance. Since state agencies have complied inconsistently with federal regulations, it is recommended that DHEW specify minimal requirements of quality to be met by any adequate program if it is to provide beneficial services. (Author/RH)

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ANALYSIS
OF
HEALTH, EDUCATION AND WELFARE DAY CARE REQUIREMENTS

July 20, 1979

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ANALYSIS

OF

HEALTH, EDUCATION AND WELFARE DAY CARE REQUIREMENTS

Overview

The HEW Day Care Requirements (HEWDCR) constitutes the most ambitious, the most comprehensive, and unfortunately, also the most complex set of regulations yet formulated for day care centers and homes. From training to group size to monitoring, HEWDCR touches upon nearly every variable of day care subject to regulation by the federal government. Although the Regulations have been directed into several clearly defined subjects to facilitate both better comprehension and strong enforcement, their wide scope and unfinished, provisional character prevent immediate assimilation. The Regulations have not yet been finalized and accordingly present options for certain subjects where public input is desired in order to reach an ultimate decision. While such a division may encourage discussion, it regrettably focuses the reader's attention on alternatives which often do not address the most controversial issues at hand. Even for those regulations that contain no options, therefore, the individual should not feel restrained from commenting simply because HEW has not actively solicited his/her opinion. Also, to best understand the significance of each regulation, one ought to first be familiar with the provisions and relative effectiveness of those former rules being replaced. As a result, for each subject discussed by HEW, the following analysis will always paraphrase the new proposals and then summarize the content and history of their predecessors.

Several caveats should precede the actual analysis. Many of the require-

ments and recommendations contained in the HEWCDR proposals were originally suggested by the National Day Care Study (NDCS), a four year, eight million dollar program commissioned by HEW. While much of the research, content and conclusions are praise-worthy, Abt Associates, the authors of the study, did not use a control group in the study and thus unintentionally encourage questions of its accuracy and definitiveness. While NBCDI does recognize the limitations of the study, it has found its comprehensiveness unparalleled by any other pertinent research; we consequently mention the study, though such references are used to put HEW's own recommendations into perspective more often than to help NBCDI defend its critiques.

An additional difficulty lies with the regulations that mandate care given by group and family day care homes. While NBCDI does not oppose the division itself, it does wonder how HEW distinguished between the respective responsibilities of centers and homes. Of the discussion that follows each regulation, the NDCS, and the HEW Appropriateness Study, none either provide a rationale for HEW's regulations or even mention particular recommendations for homes. In the absence of much evidence existing outside of the Westat, 1977 Study, NBCDI consequently will emphasize and focus on those regulations concerning day care centers, since their discussion will necessarily be more substantive.

When examining the Regulations, one ought to always keep in mind that HEWDCR will apply largely to minority, low-income children. Two pertinent facts bear citation:

1) Federal subsidy of day care is an issue of particular concern to Black families. While Black youngsters currently comprise 15% of their age groups nationally, they constitute approximately 28% of the children now participating in day care. Among those children attending day care centers that receive federal support, 39% are Black and another 11% are minority youngsters. In other words, implementation of HEW's regulations would directly affect over 400,000 children, half of whom come from minority backgrounds. (1)

2) The demand for satisfactory day care is rapidly growing, especially among Black families. More than one half of all Black mothers work in the labor pool, as opposed to 1/3 of all white mothers. Faced with salaries still substantially lower than comparable rates for whites, an impending recession and double digit inflation, many additional Black families will need to utilize federally funded day care services if they hope to meet their essential family needs.

Since day care clearly affects so many indigent children, it has strong potential for promoting socioeconomic progress. Hence, the Federal government must, above all else, ensure that such a standard of excellence is maintained for each child awarded subsidies that no child will ever receive inferior care. To best accomplish this end, the following recommendations and warnings given by the NDCS and the HEW Appropriateness Study ought to be incorporated into each provision of HEWDCR.

- "Unless regulations are stated in unambiguous language and accompanied by specific guidelines, inconsistencies in interpretation and enforcement will result". (2)

- "The more specific the requirement the easier it will be to monitor compliance and to enforce". (3)

Just as credence to these guidelines will help ensure that minimum standards of quality will be adhered to, disregard of this advice will produce the same violations and abuses that have chronicly plagued FIDCR.

Definitions - Sections 71.4 and 71.44

The definitions offer a needed refinement of the cursory list given in the 1968 regulations. In particular, precise distinctions are drawn between day care centers, family homes and group homes such that the jurisdiction given in subsequent statutes will be self-evident.

Some difficulties, nevertheless, do remain with the current list. While it defines physical categories of day care, it does not clarify any terminology describing the care given within a facility. Most important, HEWDCR should dis-

tinguish between groups, clusters and subgroups of children so that no center or monitoring agency can corrupt HEW's intent to limit the number of children that can interact with each other at any given time. Since the absence of precisely worded regulations has plagued FIDCR in the past by encouraging non-compliance, specific clarification must be given to all terms to ensure full compliance.

Applicability - 71.6 and 71.46

This proposal would apply HEWDCR standards to nearly every day care program currently receiving funding from HEW, ranging from Title XX to Indian Education programs. Head Start, which already maintains standards directed at goals varying from traditional day care objectives, need not comply with HEWDCR. The provision will not extend FIDCR's previous jurisdiction; as in past years, those families eligible for day care under Title IV-A (AFDC) can register with any center, regardless of its compliance with FIDCR. Any attempt to expand HEWDCR's jurisdiction to AFDC recipients would require legislative revision of the Social Security Act, necessitating a needless battle for the sake of conformity. Since most federally subsidized day care programs will be subject to HEWDCR, its enforcement will offer most children sufficiently equal standards of day care.

Office of Education Waiver - 71.8 and 71.48

HEW proposes that any program administered by the Office of Education be exempt from the requirements at the discretion of the Commissioner of Education. Any further regulations may be imposed by the Commissioner, also at his/her discretion. This new provision aims to foster experimentation in demonstration programs operated by the Office of Education. Presumably, the Commissioner will exercise his/her waiver prerogative only when necessary to conduct special programs.

While the intent of the program is laudable, additional safeguards should be enacted so that no child is needlessly subjected to inadequate care. Specifically,

some precise reference ought to be given regarding the scope, frequency and applicability of his/her actions; no administrator should receive a carte blanche mandate unless his/her objectives and intentions are specified and detailed. The Commissioner should, accordingly, be accountable to some supervisor, perhaps the Secretary of HEW, who would then monitor the waiver for any improprieties. As the Office of Education has traditionally not concerned itself with day care research, moderation and caution must characterize all such embryonic programs.

Program of Activities for Children - 71.10 and 71.50

Under this provision, day care centers and homes will develop a written program of age appropriate activities to facilitate development in the intellectual, emotional and physical abilities of its children. While day care homes need only include a brief description of their activities, centers must justify in writing how each activity promotes development in any of the above categories. To aid centers, state agencies will provide whatever assistance the facility needs to develop an adequate program.

HEW has substantially revised the previous regulation. Originally, the agency mandated that every child must be provided age appropriate educational activities under the supervision of a staff member trained or experienced in child development. The provider agency must also provide activities designed to improve specific growth areas including motivation, communication, positive self-concept, cognition and social interaction. Finally, games, books and toys, again all age-appropriate, must be readily available for the children. Upon passage of Title XX in 1975, these educational services requirements were waived, although HEW still "recommended" their adherence.

In effect, the current proposals have deregulated the intent of FIDCR by granting individual agencies greater flexibility in the formulation of their

objectives and techniques. Education and cognitive development will no longer constitute the primary focus of day care activities; instead, each center can concentrate on those aspects of child development that it deems most important, so long as it can justify its program to the state within the broad, if not token, guidelines suggested above. The state itself can offer consultations, manuals and other materials to centers, as well as enact specific guidelines if further requirements are necessary. Nevertheless, the state agencies are under no compunction to promulgate any regulation that might ensure quality care.

HEW's proposal leaves serious problems unanswered. First, no regulation has been issued that would mandate activities designed for the particular needs of physically or mentally handicapped children. Indeed, no regulation offers any modifications that would encourage and facilitate the mainstreaming of handicapped children when possible or would provide alternative, specialized care for more serious cases. Secondly, as already mentioned, HEWDCR does not adequately guarantee that each program will provide its clientele with quality care. No matter which particular approach towards child development that an agency might adopt, certain intrinsic objectives will always be fundamental elements of successful programs. Accordingly, either the federal or state governments should be mandated to promulgate and enforce those minimum requirements of child care necessary to prevent any incidence of inadequate or insufficient care. Such meager provisions would not significantly interfere with innovation and could help ensure widespread quality. While NBCDI concurs with the National Day Care Study and the HEW Appropriateness of FIDCR Study that centers ought to design and implement their programs according to their own individual philosophy, the Institute does not accept the belief that such flexibility would be endangered by regulations resembling the 1968 Educational Services clause. Furthermore, the terms "age appropriate" and "developmental needs" contained in the Regulation are sufficiently vague to allow agencies as much latitude as they desire; again, the restrictions should

specify precisely which measures would be judged as compliant with the statute. Since the National Day Care Study determined that the program's orientation can significantly affect its caliber of care[4], government does have both the right and the responsibility to offer to centers limited guidance and direction such that their quality will not be compromised. Lastly, the leniency of these regulations could conceivably induce those states that once raised their day care standards to match the original FIDCR levels to now follow the current Federal example and lower their criteria accordingly. Such a result would necessarily undercut any other attempts to improve day care.

Training - 71.12 and 71.52

HEW proposes that all care givers participate in specialized training within six months of employment. Those caregivers beginning work in centers, but not homes, without previous experience or training must also undergo a supplemental on-site orientation prior to assuming any duties. State agencies must adopt a plan specifying the nature and extent of training (Option A), although HEW does offer a second proposal (Option B) that mandates training to encompass at least ten specific subjects, including child growth and development, bilingual day care, care for the handicapped, and others.

Previous regulations in FIDCR did not elaborate either the content or the amount of training expected for caregivers. In one clause, FIDCR stipulated that those persons in direct contact with children should be trained or experienced in child care, but no clarification was given to distinguish between formal or informal education. Similarly, caregivers were expected to have "demonstrated ability to work with children", though again, FIDCR contained no criteria that might help the monitor determine such an ability. For home caregivers, HEW never discussed whether training requirements were appropriate or necessary. Finally, the regulation provided for in-service training for all caregivers without accounting for the differing needs and proficiencies of individual caregivers. Acknow-

ledging the above weaknesses, the HEW Appropriateness Study then determined that existing training programs had been inconsistently enacted and enforced, thus necessitating further reforms.[5] The National Day Care Cost-Effect Study verified this conclusion, discovering that only 40% of centers gave staff on-the-job training.[6]

To remedy the current deficiencies in staff preparation, HEW has proposed mandatory orientation sessions for inexperienced caregivers, followed by specific training given within six months of employment. In effect, all caregivers would receive training commensurate with, and in lieu of, traditional academic education. The impetus to employ practical training as a new priority originates from the recommendation of the National Day Care Study, which determined that training in child care had a much higher correlation to improved child development than did academic coursework. Consequently, NDCS advised that any future regulations should encourage the development of training programs rather than stress educational backgrounds or prior experience as preconditions for employment.

On some levels, the regulations do address problems currently afflicting the day care system. By recognizing training as a critical component of day care policy, HEW has enabled centers, particularly those catering to low-income families, to offer substantially improved programs. According to the NDCS, the quality of training administered to staff has a particularly strong impact upon low-income children; any improvements in training would therefore be especially welcome to federally subsidized agencies. In addition, HEW's intention to abolish past education or experience as preconditions for employment should significantly increase the eligibility of minority workers, an objective expressed previously by HEW.

Despite these benefits, the HEW provisions lack the scope and depth necessary to ensure that the care of children will always be entrusted to qualified personnel.

For instance, the proposal does not offer a clear explanation of either the content or the length of the orientation session; indeed, the rule could conceivably entitle head teachers to receive only the same training accorded to their assistants. As a result, NBCDI recommends that the orientations should last for two weeks, with fundamental subjects delineated in writing by HEW. Similarly, the HEWDCR regulation never indicates whether training and orientations should emphasize the skills needed to work with particular age groups. The need for age-appropriate training is glaring, as current statistics demonstrate that those caregivers working with infants and toddlers have appreciably less pertinent training than their pre-school counterparts.[7] Only mandatory age-appropriate training can rectify this imbalance. In several states, the proficiency of a caregiver is already acknowledged by the bestowal of the CDA credential. HEWDCR should, accordingly, sanction the Child Development Associate within the Regulations as an acceptable criterion of professional competence. Needless to say, NBCDI also strongly recommends that HEW adopt the specific training topics contained in Option B, since any instruction that omits one or more subjects will result in the inadequate preparation of caregivers. In a subject so vital to the welfare of children, arguments for local or state control over training should never interfere with the maintenance of minimal, necessary standards. Finally, the section makes no provision for the financing of the training program. Such funds should normally be procured under Title XX authorizations earmarked for training, but restrictions currently pending in the House would limit training to 3% of all Title XX funds. Since this low total might conceivably not afford a series of new programs, HEW ought to account for the funding of training prior to approval of HEWDCR. Perhaps the most potentially dangerous omission of this section concerns the lack of discussion of qualifications for lead caregivers as opposed to their aides and assistants. While FIDCR did not mandate such a distinction in 1968, its general desire for previous experience or education among caregivers encouraged 32 states to require center

directors and most lead teachers to have a B.A. in child development or at minimum, two years of college in a similar field.[8] If the government again does not endorse the concept of higher qualifications for key staff members, some states will drop their standards and permit unqualified personnel to assume critical positions in the operation of day c're centers. To preclude such an eventuality, HEW must distinguish in writing between the lead and assistant caregivers so that no untrained or uneducated individual will care for groups without supervision. Such a decision would demonstrably improve the quality of care for children, since the NDCS determined that properly trained lead caregivers raised their children's scores by 28% over those of children directed by inadequately trained caregivers.[9]

Apart from these specific objections, other important questions should be raised for public consideration, particularly concerning the specific qualifications for lead and home caregivers, the level of local agency participation in the development of training formulas, as well as whether the levels of training should vary for homes and centers.

Nutrition 71.14 and 71.54

In this section, HEW proposes to require for homes and centers alike either adequate and nutritious meals (Option A), or an additional mandate for lunch, two snacks, dinner when necessary and breakfast upon request (Option B). To assist menu formulation, the state agencies shall offer the services of a nutrition consultant to any facility that requests assistance. While the first FIDCR statute did express the terms of Option A, HEW and other groups discovered that compliance, especially in family and group homes, was minimal. In many cases, "negative" or "junk" foods were served to children, although the incidence of this practice was lower for centers.[10] Even under the present proposals, these conditions need not significantly change, since many homes in the past have not found consultations possible[11], a condition not redressed by HEWDCR. Similarly, unless the Regulation specifies a precise diet, these homes will have little incentive to change their menus.

The composition of the clientele of federally subsidized day care centers and homes necessitates the enactment of strong safeguards to ensure adequate nutrition. Anemia and low calorie intake are prevalent among low-income preschoolers[12]; only a specified diet that would conform to USDA or other standards can guarantee that these children will be properly fed. To help enforce these provisions, NBCDI recommends that each center make its particular diet public, thereby allowing parents to determine the quality of food received by their child. Preferably, such an arrangement would require all centers to mail menus to parents, post menus on bulletin boards and establish linkages with state or local nutritionists such that annual visits will be mandatory. In light of the record of noncompliance described above, such measures are barely sufficient to ensure the provision of adequate meals. Indeed, HEW should require all facilities to provide breakfasts for all children unless their parents request otherwise, as well as dinners for any child staying at the center for twelve hours or longer. For low-income children, the provision of a nutritious diet is a requirement that should not be diluted for any reason, particularly one of bureaucracy. When compared to the extensive monitoring currently conducted by USDA, HEW's reluctance to assume any responsibility for mandating or monitoring specific requirements is especially curious. Since effective mechanisms for monitoring already exist, no argument can reasonably explain why they should not be universalized, unless satisfactory nutrition is not a national objective. Finally, the documented ineffectiveness of Option A in previous regulations demands at least the adoption of Option B as a bare requirement for decent nutrition.

Health and Safety - 71.6 and 71.56

Within thirty days (or sixty days) of enrollment, a health assessment and all immunizations must be given to each child, according to HEW stipulations. Other requirements include the implementation of written plans for handling health, fire

and other emergencies, health checks on staff members, plus restrictions on the dispensation of medicine. For individual provider agencies, HEW gives two alternatives: under Option A, agencies will refer parents to health agencies, whereas Option B will require facilities to actually help parents obtain health services. Similarly, state agencies will either inform centers of other existing resources (Option A), or will actively construct linkages for the local groups (Option B).

Once again, these regulations constitute a significant attenuation of earlier standards. The 1968 FIDCR statutes contained extensive provisions regarding health care, including daily evaluations of each child's health, periodic medical and dental examination, plus staff health checks. Due to vagueness in language and a lack of appropriate training, many centers never implemented these requirements, particularly when other agencies could provide health services without difficulty.[13] The current proposals, consequently, would remedy the situation by removing much of the responsibility for health care from day care centers, while ensuring that adequate treatment would still be accessible.

So long as HEW selects Option B for both state and local agencies, adequate care should be available to children and their families. Considering the general leniency of these proposals in comparison to the previous set, there should be no argument against providing formal linkages and assistance for parents seeking health care, especially since no additional services will be created. Despite our general approval of these rules, some reservations do persist, nonetheless. While health assessments are an integral component of any health plan, they should not constitute a day care center's sole protection against the transmission of a communicable disease; rather, each center should require annual checkups of caregivers that would include T.B. tests. Although NBCDI does not object to the surrender by day care agencies of the responsibility for health care monitoring, it does advocate that agencies continue their watch for indications of child neglect and abuse. Should caregivers detect evidence of either condition,

they must refer the child to appropriate agencies. Lastly, whenever a community lacks facilities to treat a health problem, the state should then provide that service directly to the child in question.

Physical Environment - 71.18 and 71.58

HEW advises only that day care centers and homes should meet state and local fire, health, sanitation and safety codes with monitoring conducted by state agencies. Whenever necessary, states will also develop and enforce safety codes for centers addressing swimming, transportation and equipment safety. These simple provisions constitute a drastic cutback of previous regulations specifying the location, size and suitability of the facility in addition to its compliance with safety and sanitation codes. After enactment of FIDCR in 1968, subsequent studies determined that size of the room alone was not an exclusive determinant of the child's space, as important elements of design, organization and accoustics contribute equally to the child's well-being.[14] When such facts are added to the NDCS's discovery that nearly all centers have adequate space[15], HEW clearly need not regulate the physical environment of day care centers. Since some states, nevertheless, have inferior or unenforceable codes, HEW should thus try to induce each state to redress that deficiency in its own code. Similarly, HEW should work to develop a national code that would encorporate minimal standards, particularly the mandatory use of lead-free paint.

Social Services - 71.20 and 71.60

HEWDCR will mandate day care agencies to provide parents with information regarding available social services (Option A). If a second option (B) is adopted, centers must assist parents to obtain such services as well as follow up to ensure their satisfactory delivery. State agencies similarly will either inform day care groups of available social service resources (Option A) or by themselves will construct linkages between agencies (Option B).

Among the 1968 regulations were requirements that day care agencies help provide parents with some social services (the amount unspecified), counseling to help select an appropriate day care facility, plus any additional information and referrals. In practice, 92% of all federally subsidized programs did offer child development counseling and approximately 2/3 of these either provided social services or assisted parents to find the necessary service.[16] Although specific data concerning the actual effectiveness or conduct of these services has not been compiled, HEW has opted to disassociate non-professional day care personnel from the actual dispensation of these services. Such a decision can only involve more qualified staff in the counseling and service process, assuming that the above provision (Option B) ensuring the adequate referral and follow-up are enacted. In order to guarantee the availability of social services to all eligible families, the state must likewise help create a linkage network that would ease the referral burdens of day care agencies.

As in the case of nutrition, health and safety, the establishment of a regulated linkage system will not unduly bind states and agencies to a bureaucratic morass. When one considers a disproportionately large number of federally subsidized children live in families headed by single mothers earning less than poverty wages, the availability of a linkage system for preventive social services in fact becomes integral to the welfare of the families. To merely facilitate the provision of such services, as a linkage system would do, cannot be considered too overwhelming a responsibility.

Parent Involvement - 7.22 and 7.62

Parent involvement would, according to HEWDCR's Option A, be promoted by requiring all day care homes and centers to both provide parents with opportunities to observe the center and their child as well as offer basic information and commentary on the center and their child. Day care centers might, if Option B

is adopted, also be required to furnish government monitoring reports from the last three years and any applications for funds, both upon parental request. Finally, state agencies must provide any necessary assistance on parent relations to facilities and permit parents to select any feasible agency.

Such provisions constitute a grave departure from previous policy. In earlier years, FIDCR mandated that parents should have opportunities to observe and participate in the program options to help determine the nature and operation of the facility as well as have a chance to serve on a policy advisory committee for any agency with an enrollment of at least forty children. Since the initial adoption of FIDCR, various studies have measured the extent of family participation in such programs, with most concurring that 1 to 10% of parents actually participate in policy-making activities.[17] In its Appropriateness Study, HEW used this evidence to conclude that parents might not be given a decisive voice in policy formation, although their participation in child-related activities should be encouraged.[18] Particularly disruptive to center operations were, according to HEW, provisions requiring the presence of a minimum percentage of participating parents.

That HEW should respond to the low participation of parents with measures designed to reduce further participation will only decrease accountability and promote serious abuses of the intent of HEWDCR. While the NDCS did find a low level of parental participation, this figure was directly attributable to exigensies imposed by work schedules, not indifference to day care policy. Indeed, over half the parents interviewed at subsidized day care centers voiced a strong desire to exert some role in center control. By scheduling hours of an advisory committee accordingly, the wishes of these parents could be easily satisfied. Other important arguments, ranging from a need for further monitoring to the intrinsic value to the family of parent participation in day care, argue decisively for regulations promoting parent involvement. When considering that HEW has delegated the sole responsibility for monitoring agency compliance to state agencies

and authorizes on-site inspections only after parents have registered specific complaints, the need for effective parental supervision of each facility becomes imperative. Through the creation of an adjunct advisory board, meeting at times convenient for working parents, HEW could include parents in the decision-making and monitoring process without jeapordizing efficiency and local autonomy. The specific provisions of the HEWDCR statute are, moreover, seriously deficient in the latitude of examination of facilities and programs available to parents. Under the present proposal, parents may only use "regular" opportunities to observe the center, thereby allowing the agency to dictate those times it deems appropriate for visitations. Such vague language counters the express recommendation of the NDCS, which strongly advised that parents be allowed to visit, observe and examine both the center and records whenever wished. Given the importance of parental input, HEW ought therefore to require both open visitations as well as mandatory conferences held between staff and parents regularly scheduled two or three times a year. If enacted, the subsequent increase in parent involvement should have a positive impact upon the family itself, as studies have demonstrated that parental concern over day care usually translates into increased concern and better care at home.[19] For this reason, if none other, maximal parent participation should become a foremost objective of FIDCR.

When the practical consequence of these suggestions are weighed, little reason for state or local anxiety emerges. While the proposals will provide for parent input, allegedly an HEW objective, they will not dictate the philosophy or specific operation of any individual program. The responsibilities and activities of the parents committee will ultimately be decided by the center in conjunction with the parents; HEW will therefore accrue no more additional power or input into center operations than before but will still obtain an indirect monitor of compliance.

Group Composition - 71.24 and 71.64

In its most comprehensive and complex regulation, HEW proposes that day care centers shall maintain the following group sizes and staff child ratios at all times except for naps, meals and field trips.

Age (in years)	Option	Group Size	Staff-Child Ratio
0 - 2 1/2	A	8	1:4
	B	10	1:5
2 1/2 - 4	A	14	1:7
	B	16	1:8
4 - 6	A	18	1:9
	B	20	1:10
6 - 10	A	16	1:16
	B	18	1:18
10 - 14	A	20	1:20
	B	State requirements	State requirements

Other qualifying provisions have been added to help clarify the regulation and ensure compliance. Grouping size will always be determined on a "cluster" basis, rather than by considering the total number of children in rooms or other physical enclosures. Since some groups will necessarily mix ages, the appropriate age of the group will be determined by using the age of the youngest child only if that category constitutes 20% of the group. Otherwise, the next highest age bracket will be used as the measure. While a sufficient number (unspecified) of staff must be present at the center at all times to ensure an adequate response to any emergency, HEW is considering to allow centers to meet staffing requirements by averaging hours over the course of a day (Option B), rather than mandate compliance at all times without exception (Option A). Similar flexibility may also be achieved by "pooling" the staff for preschoolers together, as well as the school-age caregivers. Hours given by volunteers may count toward the final total if the volunteer works ten hours per week with children (Option B). Under Option A, any volunteer might contribute his/her hours to staff totals no

matter how many hours per week are volunteered. In addition, non-caregiving staff can contribute hours only if they have satisfied child care training requirements and substitutes must always be obtained when necessary. Lastly, all figures are based upon enrollment, rather than attendance.

For day care homes, HEW also gives very specific and intricate rules. Family homes must have one caregiver always present and no group size larger than six, counting the caregiver's children younger than six. If there are one or two children under twenty-four months of age, the maximum group size is five, including the caregiver's children younger than six. Alternately, if all the children are under twenty-four months old, the maximum size is three, and no children over six may be in the house unless the caregiver is their parent. In group homes, on the other hand, two caregivers must be present at all times to care for groups no larger than twelve. If children younger than twenty-four months are present, the maximum enrollment will be ten children. For both contingencies, any children of the caregiver must count towards the group size requirement.

This massive set of regulations discusses perhaps the most controversial components of day care requirements. Originally, FIDCR mandated staffing ratios similar to Option A above, although the figures must be converted to an enrollment basis and age groups were defined as six weeks to three years and three years to four years. Even though these levels have always been contested by states and individual facilities alike, they actually have been adhered to by such organizations to a surprising degree, according to the NDCS. In particular, over 76% of all non-profit, federally subsidized centers conformed to FIDCR[20], although HEW suspended compliance in 1976 in response to the protests that followed the linkage of FIDCR to Title XX programs. Group size, alternately, has been significantly reduced to from maximums of 15 and 20 for three to four and four

to six year olds, respectively. For the first time, infants and toddlers will also have their group sizes mandated by law. Such increased stringency results largely from the NCDS' determination that group size provided regulators with the most accessible, inexpensive and productive method of improving the quality of child care.[21] For the most part, their findings accrue from observations of decreased listlessness of children, better caregiver-child interaction and more teacher enthusiasm in small groups as well as positive test correlations between group size and the child's achievement. Similarly, most of the other provisions concerning day care centers originated in recommendations of the NDCS.

Most of the proposals given in this section will in fact ensure the provision of quality care. The adoption of Option A for group size and staff ratios in every age category would offer children strikingly better opportunities for development, if one accepts the figures given by NDCS. Enrollment should, moreover, be the determining criteria for group and staff figures; otherwise, centers are necessarily left with insufficient funds to pay caregivers should an illness afflict a sizeable number of children at any given time. NBCDI similarly favors the requirement forbidding non-caregiving personnel to count in staff hour totals, although the vagueness of the training proposals also necessitates that the employee demonstrate an intention to work full-time as a caregiver by enrolling in a CDA program before he/she can be counted. To similarly protect the quality of care, volunteers ought to work ten hours per week before they can be included in staff-hour computations while substitutes must also receive mandatory training within six months of their first day of work. When scheduling staff, each center ought to consider all times of the day, including meals, naps and outings, as applicable to the mandated ratios. Since emergencies can occur at any time, a sufficient number of staff ought always to be present except when the number of children is correspondingly smaller, such as opening and closing times.

Finally, HEW's decision to pool together the staff of certain age groups can only detract from its original intention for imposing staffing standards. The mere desire to give centers greater flexibility should not justify any procedure that could leave a group of 2 1/2 to three year olds without the normally requisite number of caregivers. That HEW does not mandate age-appropriate training only further compounds the issue; quite conceivably, caregivers unprepared for the care of toddlers will find themselves suddenly responsible for several children under the age of three. Admittedly, the procedure would help any center unable to reconcile its group sizes and child-adult ratios, but the switch to an enrollment standard should reduce the likelihood of such complications. Of those groups eligible for pooling, only the 2 1/2 to four year olds are measurably sensitive to changes in their staff ratios, according to NDCS data.[22] Therefore, if HEW prohibits children younger than four from receiving care from less than the requisite number of caregivers and does not allow any caregiver untrained for a specific age group to work with those children, NBCDI will not oppose the pooling concept, as it will not appreciably lower the quality of care rendered to children.

To a large degree, then, the HEW staffing and group requirements provide the scope and precision found lacking in other regulations. Interestingly, the costs and difficulties of compliance to such specific regulations will be relatively negligible, since any grouping provisions will require only minimal expenses for implementation and staffing ratios are already near their desired levels. Of course, staffing and group stipulations, especially distinctions between clusters and groups, will be difficult to enforce. Yet such objections should not provoke HEW to suspend such requirements; instead HEW ought to define its intentions and offer firm sanctions such that all agencies will know both when they are not complying and what consequences they can expect if detected.

Monitoring - 71.30 and 71.70

If HEWDCR is approved without revision, the monitoring of compliance will be conducted at least annually by state agencies (Option A). While Option B also entitles state agencies to conduct on-site inspections, these visits need occur only in response to specific allegations of non-compliance.

Over the past decade, monitoring of the performance of day care agencies has been sporadic and usually ineffective or token. While states have clearly been remiss by not enforcing HEWDCR standards, such negligence may be largely attributed to HEW indifference and vagueness, inflexibility of sanctions that would unduly punish offending agencies, and an occasional inability to reimburse agencies for their full compliance with FIDCR.[23] In particular, the NDCS discovered that more than 60% of those profitmaking centers that receive federal subsidies exceeded FIDCR group size ceilings and some other requirements[24], while other regulations, such as staffing and the provision of social services, have been obeyed. Confusion, inconsistency, and outright disregard therefore characterize the current implementation of FIDCR.

If further violations and inconsistencies are ever to be prevented, HEW must propose much more stringent and radical guidelines. Specifically, one must question HEW's decision to base monitoring upon the receipt of written reports form local agencies. Since state agencies have already proven their inability to control from their desks the activities of local groups, some provision ought to require biennial on-site investigations of each facility. After two years' experience in studying and monitoring day care center performances, Abt Associates concluded that two visits a year were the minimum requirements necessary to ensure effective monitoring. When combined with clear, consistent regulations and a wide scope of punitive sanctions, such measures should help deter non-compliance and thereby improve child care. Given, however, the poor record of state monit-

toring to date, HEW ought to weigh seriously further suggestions that would involve other agencies in the monitoring process. While HEW scrutiny of state performance would be preferable, alternate proposals might have an ad hoc national citizen's panel, state citizen's committees, or state licensing agencies determine the levels of compliance within each state. Whichever solution is chosen, HEW ought to ensure its independence and its efficiency by specifying the allocation of sufficient funds to permit full monitoring. Considering NDCS' conclusion that effective monitoring is at least as important as the content of guidelines, NBCDI will oppose any equivocation on the issue of compliance. Stringent mechanisms of enforcement must be implemented if HEWDCR can be guaranteed to promote quality care for all federally subsidized children.

Availability of Federal Financial Participation - 71.32 and 71.72

HEW proposes that any state agency provider that meets state licensing, registration and approval standards or has submitted a satisfactory plan for correcting the violations within a reasonable period of time will receive full federal funding.

Through this unprecedented statute, HEW intends to define when funding may occur, and by implication, at what point might punitive sanctions be imposed upon a delinquent agency. Ostensibly, the threat of a possible cut off of funds will sufficiently deter an agency from not complying with any regulation. HEW supervision of state efforts would, furthermore, provide an additional safeguard against either state or local violation.

Although this proposal does begin to address the urgent question of sanctions, its imprecision might in fact facilitate the very abuses that it aims to control. By granting agencies a vague "reasonable" period of time within which to correct violation, the regulations will foster delays and procrastination rather than expedite reforms. No provision, moreover, is given that would estab-

lish a precise timetable for the withdrawal or withholding of federal funds as a punitive measure. Agencies have not been publically reprimanded by HEW for non-compliance and certainly none have ever received threats of losing their subsidies.[25] Aside from HEW's admitted lack of enforcement, such lenience stems from a reluctance of state agencies to cite violations, knowing well that the requisite cessation of all federal funding might be an unjustly severe punishment.[26] One further problem concerns traditional Title XX punitive procedures. Rather than directly punish offending agencies, the Federal government first withholds funds from the state agency. Yet should the provider wish to appeal the decision, it cannot receive a hearing from HEW and must accordingly work through states. Most states have, understandably, not sought to invoke such a complex and arbitrary procedure.

No monitoring system can be considered successful if not complimented by a companion enforcement apparatus; consequently, HEW must specify a system of sanctions based on an incremental series of penalties, if adequate control is ever to be effected. NBCDI proposes that no center be granted more than six months to comply with regulations once a transgression has been detected and acknowledged. If no remedy has been enacted by that time, the offending party ought to appear before a hearing to show cause why funding should not be revoked. Given exceptionally mitigating circumstances, a center might receive an additional reprieve, lasting no longer than six months. In either case, penalties should consist of a progressively steeper series of cutbacks and fines, ultimately culminating with the revocation of funding and licensing by the end of the six month period. Hopefully, the establishment of a hearing mechanism will alleviate state concerns over vague Title XX procedures and thus encourage enforcement. When combined with a thorough system of monitoring, enactment of these reforms should enable states to enforce HEWDCR to a uniform level previously unattainable.

Rates of Payment - 71.34 and 71.74

HEW proposes that the state take into account the costs of operating each facility when establishing rates of payment.

In the past, FIDCR requirements contained no such provision, causing many providers to complain that existing state rates were not sufficient to permit compliance with the regulations.[27] For any new regulations to be practicable they must therefore ensure that agencies can afford to conform to the requirements. Since the government understandably does not wish to dictate a specific pay scale to states, it requires only that the cost of HEWDCR compliance be considered and encorporated into each state's calculations.

Regrettably, the regulation as written does not provide any incentive for states to consider such calculations. While the government cannot and should not establish precise rates, it can mandate that the rate setting process be conducted publicly and that it consider particular HEWDCR reforms, especially reimbursement based on enrollment figures, age specialization among the staff, and the employment of substitutes. It is disappointing to note that the NDCS suggested numerous reforms in accounting and reimbursement rates, and yet HEWDCR does not reflect any of these innovative suggestions. In any case, HEW must propose that the budgetary process be exposed to public scrutiny, since only public criticism will coerce recalcitrant states to adequately fund day care centers and homes.

State Agency Waiver - 71.36

Whenever less than 10% of the children at a day care center are receiving federal subsidies, HEW has proposed that the state agency may waive the federal staffing requirements for that facility.

Hopefully, this novel regulation will promote socio-economic integration

in those centers that might otherwise exclude low-income children. Since the number of children affected will be minimal and all federal requirements other than staffing will still be met, HEW contends that the value gained by integration will offset any slight detriment to the quality of child care.

While the actual intentions behind this provision are not clear, the limited scope of this provision precludes much serious debate. Admittedly, some socio-economic integration might result, but the fact that most centers already have a minority population higher than the national average would tend to preclude much serious impact. Also, since the center may never have 10% of its children receive federal subsidies, only a small number of minority children may ever register at a normally segregated center, anyway. Some centers will escape cc pliance with HEWDCR, yet nevertheless, their limited number would not drastically change the level of uniformity on a national level. One condition, however, ought to be included to prevent any involuntary agreements to lower the quality of care: children should participate in the waiver program only if their parents have had and then dismissed the opportunity to register their child with an equally accessible program that complies with Federal standards.

Future Review of Day Care Regulations - 71.38 and 71.78

HEW has proposed to review the success of the Regulations either three or four years after they have been enacted. While the Secretary will solicit public comment, no provision is made for formal hearings that would ensure that commentary be received and available for public consideration.

Once again, HEW has removed control over the Regulations further away from public input. If hearings will soon be held to determine the appropriateness and content of HEWDCR, HEW must recognize their validity as a vehicle for public expression. To not mandate such hearings in the future can only exclude the public from genuinely contributing to

day care regulations. Moreover, the provision does not call for reviews to occur with any regularity or certainty past the first four years of operation. Since such a format cannot accomodate any future developments in the day care field, NBCDI advocates the establishment of an annual hearing procedure, one that might ensure public inclusion no matter when some debate might arise. To do otherwise will only bequeath to HEWDCR a probable destiny of controversy and indecision.

State Agency Advisory Council - 71.40

Under this provision, the state agency will establish an Advisory Council to offer advice on implementation and interpretation of HEWDCR.

Since the responsibilities and the scope of the Advisory Council are not delineated in the proposal, it is impossible to determine whether it might act as an effective watchdog over state performance. Until its authority has been firmly established, NBCDI accordingly does not recommend that it be entrusted with specific tasks of monitoring, appeal, and so forth. Nevertheless, to best ensure that it does represent parental wishes in whatever roles it may assume, each Advisory Council ought to be composed of 51% parents, much like the old day care center Advisory Committees. Such a provision would guarantee the transmission of parental concerns to responsible state officials.

Effective Date - 71.40 and 71.80

HEW proposes to give agencies six months with which to comply with HEWDCR, once its final version is published in the Federal Register. All regulations are subject to this provision, except for the requirements for training and referrals to appropriate health and social services, which have a year before compliance will be enforced.

NBCDI supports both the six month deadline for most provisions, and the twelve

month limit for training and referrals. Each should give the appropriate center ample time to develop effective procedures for compliance.

Conclusion

Apart from the many ambiguities and inconsistences cited above, perhaps one of the most disturbing aspects of HEWDCR concerns the general attidudes and approaches implicit throughout the Regulations. In most cases, HEW simply defers to state authorities the responsibility for determining the precise components of each standard of quality. By decentralizing the role for defining quality, HEW in effect admits that it prefers state autonomy to the guarantee of quality for all federally subsidized children, regardless of their state of origin. Whereas all parties agree that every subject of regulation does contain an intrinsic level of quality, NBCDI believes that HEW should simply indicate those minimal requirements of quality that any adequate program must meet if it is to provide beneficial services. Since HEW does acknowledge the existence of such fundamental needs, it makes no logical sense for HEW to then permit state agencies to define those requirements as they see fit. Having already given such specific regulations and guidelines to ensure that centers maintain the group sizes and staffing ratios integral to quality care, HEW cannot credibly argue that it ought not to similarly define and specify other criteria of quality simply because it is not its province to do so. As already mentioned, inconsistent compliance has plagued FIDCR in the past; if HEW expects to foster a more cooperative attitude among agencies it must either promote uniformly specific regulations, or if not, it must then offer a reasonable explanation to account for the discrepancies. HEW's failure to adhere to this simple logic constitutes one of the greatest underlying faults of HEWDCR. To best amend the problem, HEW should reexamine each subject, be it health, nutrition, monitoring or any other vague regulation, and then list and provide for those services it believes indespensible. Any other decision will only effectively deregulate a

system that can ill afford such autonomy in view of its ten year history of non-compliance.

NOTES

1. Children at the Center: Final Report of the National Day Care Study, Volume I, prepared by Abt Associates (Cambridge, Mass. Abt Associates, 1979), Table 5, p. 199.

2. Ibid., Executive Summary, p. 26.

3. The Appropriateness of the Federal Interagency Requirements, U.S. Department of Health, Education and Welfare (Washington, D.C., 1978), p. 164.

4. Abt Associates, op. cit., p. 104.

5. Department of Health, Education and Welfare, op. cit., p. 42.

6. Ibid., p. 43.

7. Ibid., p. 46 and Abt Associates, op. cit., p. 264.

8. Department of Health, Education and Welfare, op. cit., p. 41.

9. Abt Associates, op. cit., p. 100.

10. Department of Health, Education and Welfare, op. cit., p. 70.

11. Ibid., p. 73.

12. Ibid., p. 71.

13. Ibid., pp. 68-9.

14. Ibid., p. 61.

15. Abt Associates, op. cit., p. 104.

16. Department of Health, Education and Welfare, op. cit., p. 83.

17. Ibid., p. 75 and Abt Associates, op. cit., pp. 162-3.

18. Department of Health, Education and Welfare, op. cit., pp. 80-1.

19. Ibid., pp. 78-9.

20. Abt Associates, op. cit., Table 29, p. 237.

21. Ibid., p. xxxvi.

22. Ibid., pp. 142-3, 160, and passim.

23. Department of Health, Education and Welfare, op. cit., p. 151.

24. Abt Associates, op. cit., Table 29, p. 237 and Table 30, p. 240.

25. Department of Health, Education and Welfare, op. cit., p. 157.

26. Ibid., p. 158.

27. Ibid., p. 151.